

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1648-01
Bill No.: HB 609
Subject: Prohibits certain DNR rules from being stricter than federal regulations.
Type: Original
Date: April 20, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
General Revenue	(Unknown)	(Unknown)	(Unknown)
DNR Dedicated Funds	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>All</u> State Funds	(Unknown)	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
EPA Federal Funds	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	(Unknown)	(Unknown)	(Unknown)

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	(Unknown)	(Unknown)	(Unknown)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 5 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Conservation, Department of Agriculture, and Office of Secretary of State** assume the proposed legislation will not fiscally impact their organizations.

Officials from the **Office of Attorney General (AGO)** did not respond to our request for fiscal impact. However, in response to similar language from the 2000 session (language in Perfected SS for SCS for SB 577), officials from the AGO assumed that costs related to this language are unknown because they anticipate a significant increase in litigation challenging DNR rulemaking authority.

Officials from the **Department of Natural Resources (DNR)** assume additional staff time and resources would be required when promulgating new rules which would be stricter than the federal rule. In addition, the department estimates extensive staff time and resources would be required to document and substantiate (to the level in this legislation) if existing rules which may not have comparable federal rules are challenged. When promulgating new or revised rules, the department would be responsible for proving a specific circumstance or condition in the state is causing or has the potential to cause harm to human health or the environment.

Depending upon the interpretation of "stricter than" or "comparable to" the department already has approximately 160 rules which have been promulgated to meet specific Missouri needs that may be considered "stricter than" federal law. The department estimates it could possibly take between 120 hours and 450 hours per rule to review, document, substantiate, and possibly promulgate revised state rules. Assuming 1,800 available hours per year, it would take approximately 10 FTE (assuming 120 hours per rule) or approximately 40 FTE (assuming 450 hours per rule) to implement this legislation.

The department assumes additional staff time and resources would be required when promulgating new rules. The department is unable to determine the number of rules which would be promulgated in later years which would be considered stricter than the federal law.

These provisions specify that the fiscal notes required by Section 536.200 and 536.205, RSMo. to contain information of the effects on human health and the environment, economics, pollution prevention, and the effectiveness and cost of reasonably available control methods for the proposed more restrictive rule. The department assumes additional staff time and resources would be required to meet these criteria; however, the impact is unknown.

In addition, the department is unable to determine the legal costs associated with challenges to existing rules from the passage of this legislation.

ASSUMPTION (continued)

Oversight assumes the DNR will be required to conduct some level of review of the estimated 160 rules that may be stricter than federal rules. Oversight assumes after such a review, any necessary rule changes, or deletions could result in unknown savings, costs, or losses of revenue.

Oversight also assumes there could be unknown costs to the Solid Waste Management Districts due to this proposal as the DNR's current rules relating to Solid Waste could be considered stricter than federal rules.

Additionally, Oversight assumes that until DNR rules need to be changed or established, it appears that the FTE requested by DOH would not be necessary. If DNR rules need to be changed or established and the FTE are deemed necessary to fulfill the requirements of this proposed legislation, the DOH could request these FTE through the budget process.

Officials from the **Department of Health** (DOH) assume this legislation will prohibit DNR from establishing rules that are any stricter than federal laws governing the same environmental area (e.g. solid waste, Clean Air Act, etc.). If the federal law is not sufficient to protect public health, welfare or the environment, the DNR could regulate based on whether the subject of the regulation has a significant adverse impact to public health, welfare or the environment. The criteria for evaluating this includes health. It is anticipated that DOH would be conducting risk assessments to determine the impact to public health.

Therefore, DOH would request three Environmental Specialist III's and associated program costs to implement this legislation. These personnel would conduct and/or review up to approximately nine risk assessments per year associated with new DNR rules. These three positions would be responsible for reviewing site contaminant and offsite information, evaluating site characterization data, determining potential exposure pathways, conducting investigations, documenting reviews as appropriate, and preparing risk assessments to quantify the risk to human health from contaminants. These positions would also be responsible for calculating contaminant concentrations that pose no risk to human health. These concentrations would be used for clean-up or attainment goals. This would require these personnel to remain current on all toxicology data and risk assessment methodologies.

FISCAL IMPACT - State Government

FY 2002

FY 2003

FY 2004

HW-C:LR:OD (12/00)

(10 Mo.)

GENERAL REVENUE FUND

Cost - Department of Natural Resources

Personal Services

(Unknown) (Unknown) (Unknown)

Cost - Attorney General's Office

Personal Services

(Unknown) (Unknown) (Unknown)

**ESTIMATED NET EFFECT ON
GENERAL REVENUE FUND**

(Unknown) (Unknown) (Unknown)

DNR DEDICATED FUNDS

Cost - Department of Natural Resources

Personal Services

(Unknown) (Unknown) (Unknown)

FISCAL IMPACT - Local Government

FY 2002 FY 2003 FY 2004
(10 Mo.)

Solid Waste Management Districts

Cost - Solid Waste Management Districts

(Unknown) (Unknown) (Unknown)

FISCAL IMPACT - Small Business

This proposal could impact small businesses subject to DNR rules.

DESCRIPTION

This bill prohibits most rules of the Department of Natural Resources on clean air, clean water, underground storage tanks, hazardous waste management, surface mining, land reclamation, safe drinking water, and solid waste management from being stricter than federal requirements.

In cases where there are either insufficient or no federal guidelines, the department may develop more restrictive rules if there is substantial evidence that an activity will have an adverse impact on public health or the environment and a rule is necessary to prevent or alleviate the impact. Specific findings on the impact and a justification for the proposed rule must be published in the Missouri Register. The rule's fiscal note must also include an assessment of the effectiveness and cost of any reasonably available pollution control methods required by the rule.

DESCRIPTION (continued)

The bill also repeals the provision that allows affected parties to appeal decisions of the department director to the appropriate board or commission.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Agriculture
Department of Conservation
Department of Health
Department of Natural Resources
Office of Secretary of State

NOT RESPONDING: Office of Attorney General

A handwritten signature in black ink, appearing to read "Jeanne Jarrett".

Jeanne Jarrett, CPA
Director

April 20, 2001